

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

GALDERMA LABORATORIES,
L.P. and TCD ROYALTY SUB LP

Plaintiffs,

V.

LUPIN INC. and LUPIN LIMITED

Defendants.

REDACTED - PUBLIC VERSION

C.A. No. 21-cv-01710-SB

**DEFENDANTS LUPIN INC. AND LUPIN LIMITED’S
OPPOSITION TO MOTION FOR LEAVE TO FILE A SUR-REPLY REGARDING
DAUBERT MOTION TO PRECLUDE DR. RUDNIC’S THEORY OF
LUPIN’S COMPOSITION RATIO BASED ON DAY 1 PLASMA CONCENTRATIONS**

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Dated: November 10, 2023

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Lupin respectfully requests that the Court deny Galderma's motion for leave because it does not identify any new evidence, facts, or arguments in Lupin's reply brief. *St. Clair Intellectual Prop. Consultants, Inc. v. Samsung Elecs. Co.*, 291 F.R.D. 75, 80 (D. Del. 2013) ("A Court may grant leave to file a sur-reply if it responds to new evidence, facts, or arguments.").

I. "Chose to Ignore" is Not a New Argument.

Galderma argues that "Lupin made new arguments in its Reply (D.I. 157)," but does not cite or quote any such "new argument." Instead, Galderma states, ambiguously, "Lupin chose to ignore that fact in its opening brief." D.I. 162 at 1. Even if Lupin "ignored" Galderma's current version of a "fact," that would not be a new argument. Equally important, the record proves that Lupin cited and quoted Galderma's actual statements of facts and Dr. Rudnic's actual testimony in both its opening and reply briefs. *See* D.I. 153, 157. No fact was ignored.

II. Rebuttal Authority is Not a New Argument.

Galderma also argues that Lupin "failed to address" Galderma's argument that the Court need not decide a *Daubert* motion before trial. But Lupin had no reason to predict that Galderma would argue delay over substance in its opposition brief. The Scheduling Order (D.I. 18) provides for *Daubert* motions, so Lupin did not "fail to address" any procedural point in its opening brief. To the contrary, when Galderma argued delay over substance (D.I. 155 at 3-5), Lupin quoted rebuttal authority. *See* D.I. 157 ("But the Third Circuit has stated that the requirements of Rule 702 apply equally in bench trials. *See UGI Sunbury LLC v. A Permanent Easement for 1.7575 Acres*, 949 F.3d 825, 832-33 (3d Cir. 2020) ("The text of Rule 702 contains **no exceptions** to these requirements, so if they are not satisfied, an expert cannot testify before the 'trier of fact.'").").¹

¹ If the Court grants Galderma's motion, Lupin respectfully requests the opportunity to address Galderma's sur-reply arguments at the Pretrial Conference.

III. Conclusion.

Lupin maintains that Dr. Rudnic's novel attempt to reverse-engineer an infringing immediate release portion from how he sees Day 1 plasma concentration data fails each and every *Daubert* reliability test. *See, e.g.*, D.I. 153 ¶ 24; D.I. 157 at 9-10.

* * *

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CERTIFICATE OF SERVICE

I, Megan C. Haney, Esquire, hereby certify that on November 10, 2023, a copy of Defendants Lupin Inc. and Lupin Limited's Opposition to Motion for Leave to File a Sur-reply Regarding Daubert Motion to Preclude Dr. Rudnic's Theory of Lupin's Composition Ration Based on Day 1 Plasma Concentrations was caused to be served upon the following counsel in the manner indicated below:

VIA EMAIL

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